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H. J. Miller

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-204090

DATE: April 16, 1982

MATTER OF: Masoneilan International Inc.

DIGEST:

1. If evidence submitted by claimant is considered in best light, it is merely conflicting with agency's evidence and does not satisfy burden that claimant must prove its case affirmatively.
2. Where it cannot be proven that Government received delivery of item and that Government, therefore, received benefit of such item, claim based on other than formal contract may not be paid.

Masoneilan International Inc. (Masoneilan) appeals the Certificate of Settlement, dated May 20, 1981, issued by our Accounting and Financial Management Division regarding the Masoneilan claim for \$562.60 arising out of an alleged delivery of one pressure temperature instrument to the Department of the Navy. The claim was denied because "it cannot be determined that a benefit has been derived, since there is no record of delivery." We affirm the denial.

In support of its appeal, Masoneilan has submitted a copy of a United Parcel Service (UPS) "Shipper Tracer" showing that the item was shipped by Masoneilan using UPS on July 16, 1979, on consignment to the Receiving Officer, Naval Supply Center, Norfolk; that the item was delivered at the Naval Supply Center on July 19, 1979; and that the receipt of delivery was signed for by a J. G. Tango. Masoneilan notes that this was an emergency order and shipped without having received a copy of the purchase order, but it had been told the number of the order was NOO189-78-VM-185. Masoneilan also alleges that the receiving officer "has located his receipt and claims to have delivered [the item] to Build. 106 on 7/20/79 for the receiving officer on the [U.S.S.] Trenton." The Fleet Accounting and Disbursing Center stated that it could not locate any purchase

order issued to Masoneilan for the item and that purchase order NOO189-78-VM-185 had been issued instead to the Ingersoll Rand Co. for an entirely different item.

The Receiving Office of the Naval Supply Center now advises that its receipt sheets (copies of the UPS delivery sheets) show that nothing was received from Masoneilan on July 19--the Masoneilan shipper number is not included on the UPS sheet for that date. However, on the sheet for July 18, the Masoneilan shipper number is recorded showing that some item was received on that date, although what was received is not indicated on the sheet and, therefore, is unknown. As to the UPS "Shipper Tracer" showing that a J. G. Tango signed for the receipt of the pressure temperature instrument, the Receiving Office states that no employee of that name now exists or existed at that time. Apart from the receipt sheets, Receiving Office personnel have no record or knowledge regarding the Masoneilan assertions.

While we believe that the copies of the actual UPS delivery sheets for July 18 and July 19 disprove the assertion that the Masoneilan instrument was delivered to/received by the Receiving Office on July 19, we note that, at best, it merely conflicts with the agency's evidence. Conflicting evidence does not satisfy the burden which Masoneilan must meet to prove its case affirmatively. United Inter-Mountain Telephone Company, B-197471.2, August 14, 1981, 81-2 CPD 140.

While our Office has permitted payment on a quantum meruit/quantum valebat basis for claims based upon other than a formal contract where the Government has received a benefit from the acquisition of the services/goods and the acquisition has been implicitly or explicitly ratified by the cognizant contracting officials, such payment has been predicated on the theory that it would be inequitable for the Government to retain the benefit of the services/goods of another without recompense. Anheuser-Busch, Inc., B-192739, September 29, 1978, 78-2 CPD 246. In the present case, payment would not be proper because it has not been shown that the Government received the item nor any benefit.

Accordingly, the Certificate of Settlement denying the claim is affirmed.

for *Milton F. Jorolan*
Comptroller General
of the United States